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No. 91-1937

Supreme Court, U.S.
FILED
JUN 26 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

WILLIAM R. FINCHER,

Petitioner,

vs.

B&D AIR CONDITIONING AND HEATING COMPANY and DONALD L. PARTRIDGE,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals for the First District of Texas

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. The first question as presented by petitioner does not state a question which may be reviewed by the Supreme Court by writ of certiorari pursuant to 28 U.S.C. § 1257(a) as it does not bring into question the validity of a treaty or statute of the United States or the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaty or laws of the United States, nor does it describe any title, right, privilege or immunity as being especially set up or claimed under the Constitution, treaties or statutes of the United States.

2. Respondent believes that the second question presented by the petitioner should be more precisely stated to accurately focus the Court's attention as follows:

Does Section 17.022, as construed and applied to permit a judgment to be entered against a partner of a Texas general partnership who was actually served with process on behalf of the partnership, appeared and participated in the trial of the action and was named individually as a party in a suit after trial on the merits pursuant to a trial amendment, violate the due process clause of the 14th Amendment?

PARTIES TO THE PROCEEDING

Petitioner has accurately stated the identity of the parties.

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RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW, JURISDICTION, CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Petitioner has accurately stated the opinions and judgments delivered by the courts below and a statement of the ground on

which the jurisdiction of the Supreme Court has been invoked and the Constitutional provisions and Texas State Statute which the case involves.

STATEMENT OF THE CASE

Petitioner's statement of the case is adequate. Texas partnership law property interests may be adversely effected.

SUMMARY OF ARGUMENT

The entry of the judgment against petitioner individually did not violate the Fourteenth Amendment, because under long standing fundamental and statutory laws concerning partnerships, petitioner was at all times charged with knowledge that as a general partner of a Texas general partnership he could be individually held liable for all debts and obligations of the partnership where he was a partner actually served.

REASONS FOR DENYING THE WRIT

Section 15 of the *Texas Uniform Partnership Act*, Tex.R.Civ.Stat.Ann. Article 6132b, Section 15 (Vernon 1970), states

> All partners are liable jointly and severally for all debts and obligations of the partnership including those under Sections 13 and 14.

Section 17.022 of the *Texas Civil Practice and Remedies Code*, states

> Citation served on one member of a partnership authorizes a judgment against the partnership and the partner actually served.

The plain meaning of these statutory provisions is that a partner of a general partnership is liable jointly and severally for all debts and obligations of the partnership, and each partner who is served is thereby put on notice that (a) a suit against the partnership has been brought and (b) that he may be personally held liable for any judgment entered against the partnership. The due process concerns of the Fourteenth Amendment are satisfied by the provision in Section 17.022 that judgment may be entered against the partner "actually served" because that insures that at least that partner was on actual notice of the existence of a lawsuit against the partnership. If a partner receives such a notice, that partner then has the right, the standing and the opportunity to present all evidence and defenses that the partnership and/or he, as one jointly and severally liable for the partnership's debts, may have.

That all general partners are liable jointly and severally for the debts and obligations of a partnership is fundamental. All general partners are on notice of their exposure from the moment they agree to act as general partners and therefore it may be presumed that they voluntarily assumed that risk. The Texas statutory provisions confirming this are quite plain and clear, and a general partner such as petitioner should not be heard to claim unfair surprise at being held personally liable for a debt or obligation of a partnership.

Petitioner has failed to show any prejudice as a result of his claim that he was never properly served individually. Being on notice as a general partner that he was jointly and severally liable for all debts and obligations of the partnership, he was also on notice that if he wished to avoid such liability as a general partner, he should take steps to do so. He was not denied the right to defend himself at the trial. He in fact participated at the trial as a trustee partner. He had a fair opportunity to contest both the partnership's liability and his own as a partner.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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